Cleveland Cinemas Management Company, Ltd. *and* International Alliance of Theatrical Stage Employees of the United States and Canada, Local 160

Cleveland Cinemas Management Company, Ltd., Cleveland Cinemas, LLC, Shaker Square Cinemas LLC, and Cedar-Lee Theatre Company, Single Employer *and* International Alliance of Theatrical Stage Employees of the United States and Canada, Local 160. Cases 8-CA-34971-1 and 8-CA-35072-1

March 31, 2006

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN AND WALSH

On November 10, 2005, Administrative Law Judge Martin J. Linsky issued the attached decision. The Respondent filed exceptions and a supporting brief, the General Counsel filed an answering brief, and the Respondent filed a reply brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions[1] and briefs and has decided to affirm the judge's rulings, findings,[2] and conclusions and to adopt the recommended Order as modified and set forth in full below.[3]

ORDER

The National Labor Relations Board orders that the Respondent, Cleveland Cinemas Management Company, Ltd., Cleveland Cinemas, LLC, Shaker Square Cinemas LLC, and Cedar-Lee Theatre Company, a single employer, Cleveland, Ohio, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing to bargain in good faith with the Union, International Alliance of Theatrical Stage Employees of the United States and Canada, Local 160, as the representative of the employees in the appropriate unit described below, by unilaterally implementing a proposal at impasse that is different from its last, best offer to the Union.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On the Union's request, bargain in good faith with the Union as the exclusive representative of employees in the following appropriate unit:

> All employees employed by the Respondent at its Tower City, Shaker Square and Cedar Lee motion picture theaters as moving picture machine operators

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[1] No exceptions were filed to the judge's dismissal of the allegation that the Respondent violated Sec. 8(a)(3) and (1) by failing to consider for employment and/or refusing to hire three projectionists who had been employed by Megastar, the Respondent's predecessor, at the time the Respondent replaced Megastar as the operator of a Cleveland-area theater.

[2] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[3] We shall modify the judge's recommended Order to provide the appropriate remedy for the violation found, and in accordance with *Ferguson Electric Co., Inc.*, 335 NLRB 142 (2001), and *Excel Container, Inc.*, 325 NLRB 17 (1997). We shall also substitute a new notice in conformity with the Order as modified. "[M]atters of remedy are traditionally within the Board's province, and may be addressed by the Board sua sponte." *R.J.E. Leasing Corp.*, 262 NLRB 373 fn. 1 (1982) (modified decision). Thus, where, as here, an employer at impasse unlawfully has implemented only part of its last best offer, the remedy is to restore the status quo ante and require the employer, on request, to bargain with the union. See *Plainville Ready Mix Concrete Co.*, 309 NLRB 581 (1992), enfd. 44 F.3d 1320 (6th Cir. 1995). We shall therefore require the Respondent to restore the status quo ante by reinstating the projectionists to the positions they occupied prior to the Respondent's unlawful implementation and making them whole for any loss of pay and benefits they suffered as a result of the Respondent's unlawful conduct.

The judge ordered the implementation of the Service Technician Agreement. He did not order the restoration of the projectionist position. Chairman Battista would adopt the judge's remedy. The General Counsel has not excepted to it, and the Respondent has excepted only to the finding of a violation. The violation here was the failure to implement the entirety of the Respondent's last proposal. Thus, the sound remedy, not protested by anyone, is to require the implementation of that last proposal. That proposal was the one on the table at the time of the lawful impasse, and that is the one that should have been implemented. Further, there is no allegation or finding that the bargaining leading up to the impasse was in bad faith. Accordingly, it makes no remedial sense to place the parties back to where they were prior to the start of that bargaining.

Plainville Ready Mix, supra, is not to the contrary. The violation there was the implementation of certain provisions of the health and wage plans, and thus the remedy was to rescind those implementations. By contrast, the violation here was *the failure to implement the Service Technician Agreement*. See Sec. II, B, par. 13 of ALJD. It was not the elimination of the projectionist positions. Consistent with that, the judge ordered only the implementation of the Service Technician Agreement, and the General Counsel does not except to that limited remedy.

and projectionists, but excluding managers, assistant managers, chiefs-of-staff, chief ushers, concession attendants, ushers, doormen, ticket sellers, maintenance crews, cleaners, guards, supervisors and all other employees.

(b) Within 14 days from the date of the Board's Order, offer the projectionists whose jobs were eliminated on June 1, 2004, full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

(c) Make the projectionists whole, with interest, for any loss of earnings and other benefits resulting from the Respondent's unlawful implementation of the elimination of their positions. Backpay shall be computed in the manner prescribed in *F.W. Woolworth Co.*, 90 NLRB 289 (1950), with interest to be computed in the manner set forth in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

(d) Within 14 days from the date of the Board's Order, remove from its files any reference to the unlawful elimination of the projectionist positions, and within 3 days thereafter, notify the projectionists, in writing, that it has done so and that it will not use the elimination of the projectionists' positions against them in any way.

(e) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(f) Within 14 days after service by the Region, post at its facilities in Cleveland, Ohio, copies of the attached notice marked "Appendix."[4] Copies of the notice, on forms provided by the Regional Director for Region 8, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a
copy of the notice to all current employees and former employees employed by the Respondent at any time since June 1, 2004.

(g) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply with this Order.

Dated, Washington, D.C. March 31, 2006

Robert J. Battista , Chairman

Wilma B. Liebman, Member

Dennis P. Walsh , Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX B

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities

WE WILL NOT fail to bargain in good faith with the Union, International Alliance of Theatrical Stage Employees of the United States and Canada, Local 160, as the representative of the employees in the appropriate unit described below, by unilaterally implementing a proposal at impasse that is different from our last, best offer to the Union.

[4] If this Order is enforced by a Judgment of the United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, on the Union's request, bargain in good faith with the Union as the exclusive representative of employees in the following appropriate unit:

> All employees employed by the Respondent at its Tower City, Shaker Square and Cedar Lee motion picture theaters as moving picture machine operators and projectionists, but excluding managers, assistant managers, chiefs-of-staff, chief ushers, concession attendants, ushers, doormen, ticket sellers, maintenance crews, cleaners, guards, supervisors and all other employees.

WE WILL, within 14 days from the date of the Board's Order, offer the projectionists whose jobs were eliminated on June 1, 2004, full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make the projectionists whole, with interest, for any loss of earnings and other benefits resulting from the unlawful implementation of the elimination of their positions.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful elimination of the projectionist positions, and WE WILL, within 3 days thereafter, notify the projectionists, in writing, that we have done so and that we will not use the elimination of the projectionists' positions against them in any way.

CLEVELAND CINEMAS MANAGEMENT COMPANY, LTD., CLEVELAND CINEMAS, LLC, SHAKER SQUARE CINEMAS LLC, AND CEDAR-LEE THEATRE COMPANY, A SINGLE EMPLOYER

Alan Binstock, Esq. for the General Counsel.
Stephen A. Markus and Fred Seleman, Esqs. (Ulmer and Berne), of Cleveland, Ohio, for the Respondent.
John A. Galinac, Business Agent, of Cleveland, Ohio, for the Charging Party.

DECISION

STATEMENT OF THE CASE

MARTIN J. LINSKY, Administrative Law Judge: On April 8, 2004, International Alliance of Theatrical Stage Employees of the United States and Canada, Local 160, Local 160 (Union), filed a charge against Cleveland Cinemas Management Company, LTD (Respondent), in Case 8–CA–34971–1.

On September 30, 2004 the National Labor Relations Board, by the Regional Director for Region 8, issued a complaint alleging that Respondent violated Section 8(a)(1) and (3) of the National Labor Relations Act, when in March 2004 it refused to consider for employment and/or refused to hire Michael Yeagar, Thomas Draper, and James Marcinek.

Respondent filed an answer in which it denied that it violated the Act in any way.

On May 26, June 9, and September 16, 2004, the Union filed a charge, a first amended charge, and a second amended charge, respectively, in Case 8–CA–35072–1 against Respondent and three other entities, i.e., Cleveland Cinemas, LLC, Shaker Square Cinemas, LLC, and Cedar-Lee Theatre Company.

On October 14, 2004, the National Labor Relations Board, by the Regional Director for Region 8 issued a complaint alleging that the four entities listed above are a single employer and that the entities, collectively referred to as Respondent, violated Section 8(a) (1) and (5) of the Act when on June 1, 2004, after reaching a lawful impasse in contract negotiations, it unlawfully failed to implement that portion of its final contract offer that afforded service technician work to the unit represented by the Union.

Respondent filed an answer in which it denied it violated the Act in any way.

On October 14, 2004 the National Labor Relations Board, by the Regional Director for Region 8, ordered that these two cases be consolidated for trial.

A hearing was held before me on June 6, 7, and 8, 2005, in Cleveland, Ohio.

Based on the entire record to include post hearing briefs submitted by Counsel for the General Counsel and Counsel for Respondent and considering the testimony of the witnesses and their demeanor, I hereby make the following

I. FINDINGS OF FACT

Respondent, Cleveland Cinema Management Company, LTD is an Ohio limited liability company with an office and place of business in Solon, Ohio, where it has been engaged in the operation of movie theaters in the Cleveland, Ohio area. By contract with Dolan Cinemas, LLC and 422 Company LTD, Respondent assumed management of the Chagrin Cinemas, a fourteen screen movie theater, on April 9, 2004.

The unfair labor practices alleged in Case 8–CA–4971–1 involve the Chagrin Theater.

Respondent admits, and I find, that it has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

The unfair labor practice allegations in Case 8–CA–35072–1 involve four entities: Cleveland Cinemas Management Company., LTD, which operates movie theaters in the Cleveland, Ohio, area; Cleveland Cinemas, LLC, that owns and operates the Tower City Movie Theater, an 11-screen theater in Cleveland, Ohio; the Cedar-Lee Theater Company which owns and operates the Cedar-Lee Theater, a 6-screen theater located in Cleveland Heights, Ohio; and Shaker Square Cinemas LLC which owns and operates the Shaker Square Cinema Movie Theater, a 6-screen movie theater located in Cleveland, Ohio.

For purposes of this litigation only Respondent admits that

the four entities listed above constitute a single employer. Respondent further admits, and I find, that Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. The Section 8(a)(1) and (5) allegations in Case 8–CA–35072–1 involve negotiations between Respondent and the Union regarding the three movie theaters mentioned above, i.e., Tower City, Shaker Square, and Cedar Lee.

II. THE LABOR ORGANIZATION INVOLVED

Respondent admits, and I find, that at all material times the Union has been a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. Case 8–CA–34971–1

As background for both this case and Case 8–CA–35072–1 it should be noted that technology has rather dramatically changed the job of movie projectionist. The testimony and documents in this case demonstrate that being a projectionist is not as complex a job as it once was. Because of technology theater managers can also run several movie projectors at the same time. Fewer and fewer people running movie projectors can run film on more and more screens than in the past. I don't believe any party to this litigation would disagree with this.

In Case 8–CA–34971–1 it is alleged that Respondent violated Section 8(a) (1) and (3) of the Act when it failed to consider for employment and/or refused to hire Michael Yeagar, Thomas Draper, and James Marcinek.

Larry Dolan owns the Chagrin Theater which is a 14-screen movie theater in Solon, Ohio. He contracted with Megastar to operate the theater for him. Later he contracted with Respondent to replace Megastar as the operator of the theater. Respondent was due to take over operation of the theater on April 9, 2004.

When Megastar managed the Chagrin theater there were three classifications of workers in the theater—managers, projectionists, and floor staff.

Megastar employed three managers, i.e., a general manager, a house manager, and an assistant manager. It also employed three projectionists—two full time projectionists, Michael Yeager and Thomas Draper, who worked 35 to 40 hours per week and a part-time or swing projectionist James Marcinek who worked about 9 hours per week.

Megastar also employed floor staff. Floor staff consisted of ushers, people who worked in the concessions, ticket takers, etc.

Only the projectionists were represented by a Union. In this case IATSE Local 160.

It is uncontested and *not* alleged as an unfair labor practice that Respondent, when it took over the theater on April 9, 2004, wanted to have the three managers, who were to be statutory supervisors within the meaning of Section 2(11) of the Act, do the projectionist's work and the six jobs, i.e., three managers and three projectionists would be reduced to three managers who would do the projectionist work.

Respondent, in the person of owner Jon Foreman and director of operations Ken Young, hired the three managers who worked for Megastar as managers. Tim Monde was kept on as General Manager, Brian Dunigan was kept on as House Manager, and David Smith was kept on as Assistant or Relief Manager. Prior to Respondent taking over the Chagrin theater on April 9, 2004, the three managers interviewed and hired the floor staff.

Respondent's owner and founder Jon Foreman testified that the three managers were kept on because he understood that they were doing a satisfactory job. There is no evidence in the record to refute this. For example, no one from Megastar, no representative of owner Larry Dolan or Larry Dolan himself or any employee at the Chagrin theater claimed that the three managers who were kept on or any one of them were doing a bad job.

Since Respondent was hiring statutory supervisors to do manager and projectionist duties and not promoting its employees to management positions it was not unlawful for it to discriminate in hiring based on union affiliation. If, on the other hand, Respondent hired all the employees in the theater and was deciding who to promote to management from within the ranks of its own employees then it could *not* discriminate based on union affiliation in deciding which of its employees to promote to management. Yeager, Draper, and Marcinek, however, were not employees of Respondent when it decided to hire the Megastar managers to be its statutory supervisors and to run the projection equipment.

It should be noted that only Michael Yeager ever submitted an application. Neither Draper nor Marcinek did. Monde, Dunnigan and Smith, all of whom were hired, did submit applications.

It appears Respondent was a successor to Megastar, i.e., running the same business, in the same location with the same equipment and with a majority of the same people employed by Megastar. But because the statutory supervisors were chosen not from the ranks of Respondent's employees but from the outside I must conclude as a matter of law that the Act was not violated in Case 8–CA–34971–1. See, *Pacific American Shipowners Association*, 98 NLRB 582, 597-598 (1952).[1]

It could well be that the union represented projectionists would have made better "manager/projectionists" than those hired but that it is not the test. Yeager and Draper also testified that it seemed like Respondent really didn't want them and that well may be the case but there was still no violation of the Act.

The record, I note, is devoid of evidence that after Yeager, Draper and Marcinek left the Chagrin theater that the theater fell apart in terms of films not being shown properly and on time.

B. Case 8–CA–35072–1

As noted in the first part of Section III, A, above, the occupation of movie projectionist has been reduced in complexity by technology.

It is not alleged that Respondent violated the Act by eliminating so-called dedicated projectionist positions and assigning

[1] I resist General Counsel's suggestion that I not follow this case. The General Counsel may want to argue the merits of reversing this case to the Board through the Exceptions procedure.

projectionist work to managers who were statutory supervisors.

Respondent advised the Union that it wished to eliminate the dedicated projectionists' positions at three separate theaters and have that projection work done by managers who would be statutory supervisors. Respondent recognized the obligation it had to bargain over the effects of this decision on the bargaining unit employees.

The three movie theaters were the Tower City Theater with 11 screens, the Shaker Square Theater with 6 screens, and the Cedar-Lee Theater with 6 screens.

The parties met three times, May 12, May 17, and May 25, 2004. Each time they met a Federal mediator from the Federal Mediation and Conciliation Service (FMCS) was present.

Respondent was represented at the negotiations by Jon Foreman and attorney Stephen Markus. The Union was represented by business agent John Galinac and Local 160 President William Taggart.

The separate collective-bargaining agreements at each of the three theaters had expired. At Tower City it had expired on April 30, 2000, and at the Cedar-Lee and Shaker Square theaters it expired on December 31, 2002. The negotiations in May 2004 involved all three theaters.

It is conceded by the parties to this litigation that a lawful impasse in negotiations had been reached.

When lawful impasse is reached the employer is allowed to make unilateral changes in working conditions. Even after impasse, such changes must "not [be] substantially different or greater than any [offers] which the employer . . . proposed during the negotiations." *Atlas Tack Corp.*, 226 NLRB 222, 227 (1976), enfd. 559 F.2d 1201 (1st Cir. 1977). Often times it is said that the employer can implement its last best offer to the Union.

Although Respondent started out negotiations with the Union with the intent that it be limited to effects bargaining over the decision to eliminate the dedicated projectionist positions and have statutory supervisors run the projection equipment Respondent modified its position and requested the Union to accept a service technician agreement, which the Union had agreed to with another movie theater chain, in lieu of having dedicated projectionists at the theaters. The Union wanted both dedicated projectionists positions and a service technician agreement. Respondent's position was a "quid pro quo," i.e., the Union gives up on the projectionists positions and represents a unit of service technicians which would consist of 40 hours of work per week for two service technicians to cover all three theaters. See, *Plainville Ready Mix*, 309 NLRB 581 (1992), enfd. 44 F.3d 1320 (6th Cir. 1995). I agree with the General Counsel that this case controls in this situation.

Respondent put its proposal regarding the service technician agreement in writing and presented it to the Union on May 17, 2004. See General Counsel Exhibit 18. A copy of Respondent's proposed service technician agreement is attached to this decision as Appendix A.

On June 1, 2004, Respondent partially implemented its last best offer, i.e., it eliminated the dedicated projectionist positions and had that work done by statutory supervisors, but it did not implement the service technicians agreement which was Respondent's very own proposal.

I find that Respondent violated Section 8(a)(1) and (5) of the Act when it failed to implement its proposal regarding the service technician agreement.

Respondent objects and claims that the service technician agreement would be an unlawful pre-hire agreement, but it is not at all clear who the service technicians would be if the service technician agreement had been implemented. It is quite possible that the service technicians would be some of the same union represented projectionists who worked at the three theaters.

Again, the service technician agreement was the proposal of Respondent and not the Union. Having proposed it and now saying it would be illegal would be similar to a person about to be sentenced for killing his or her parents throwing himself or herself on the mercy of the Court because he or she is an orphan.

Respondent also argued that the Union did not want the service technician agreement, but the Union didn't want it in lieu of representing the traditional unit of projectionists. It is inconceivable that the Union should prefer to represent no one at the three theaters rather than a unit of two service technicians.

REMEDY

The remedy for this violation should include a cease and desist order, the posting of a notice, and a requirement that Respondent recognize and bargain in good faith with the Union and implement the service technician agreement which is attached to this decision as Appendix A.

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Sections
2(2), (6) and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent violated Section 8(a)(1) and (5) of the Act when it failed and refused to
implement the Service Technician Agreement after reaching lawful impasse in negotiations with the Union.

4. The above violation of the Act is an unfair labor practice affecting commerce within the meaning of Section 2(6) and (7) of the Act.

On these findings of fact and conclusions of law and on the entire record I issue the following recommended[2]

ORDER

Respondent, Cleveland Cinemas Management Company, LTD, Cleveland Cinemas, LLC, Shaker Square Cinemas LLC, and Cedar-Lee Theater Company, a single employer for purposes of this litigation, shall:

1. Cease and desist from

(a) Unlawfully failing and refusing to implement the Service Technician Agreement after

[2] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

reaching lawful impasse in negotiations with the Union.

(b) In any like or related manner interfering with, restraining, or coercing employees in

the exercise of the rights guaranteed them in the National Labor Relations Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Upon request implement the Service Technician Agreement which is attached to this Decision as Appendix A.

(b) Recognize and bargain in good faith with the Union regarding the unit described in Article I of the Service Technician Agreement (Appendix A).

(c) Within 14 days after service by the Region, post at the Tower City Theater, Shaker Square Theater and Cedar-Lee Theater where notices customarily are posted, copies of the attached notice marked "Appendix B."[3] Copies of the notice, on forms provided by the Regional Director for Region 8 after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees at the three theaters customarily are posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that Respondent has gone out of business or closed one or more of the theaters involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed at the closed theaters at any time since May 1, 2004.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

APPENDIX A

MANAGEMENT'S PROPOSAL—May 17, 2004

AGREEMENT BETWEEN CLEVELAND CINEMAS MANAGEMENT CO., LTD. AND LOCAL NO. 160 OF THE INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES AND MOVING PICTURE TECHNICIANS, ARTISTS AND ALLIED CRAFTS OF THE UNITED STATES AND CANADA EFFECTIVE JUNE 1, 2004 TO MAY 31, 2006

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AGREEMENT

THIS AGREEMENT, made the 1st day of JUNE, 2004 by and between CLEVELAND CINEMAS MANAGEMENT CO., LTD (hereinafter referred to as the "Employer") and LOCAL NO. 160 OF THE INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES AND MOVING PICTURE TECHNICIANS, ARTISTS AND ALLIED CRAFTS OF THE UNITED STATES AND. CANADA (hereinafter referred to as the "Union").

ARTICLE I

COVERAGE AND PURPOSE

1.1 The parties are entering into this Agreement for the purpose of providing service and maintenance to theatre projection and sound equipment as hereinafter described. This Agreement supersedes and replaces any Collective Bargaining Agreement with the Union covering employees who work at the Tower City, Shaker Square or Cedar Lee theatres.

1.2 This Agreement shall apply to and cover service technicians employed by the Employer at the Tower City, Shaker Square and Cedar Lee motion picture theatres. Such service technicians shall, unless otherwise specifically designated, be referred to hereinafter as "service technicians, technicians, projectionists or employees." Specifically excluded from coverage shall be all managers, assistant managers, chiefs-of-staff, chief ushers, concession attendants, ushers, doormen, ticket sellers, maintenance crews, cleaners, guards, supervisors; and all other employees.

1.3 If at any time the Union is unable to refer applicants deemed qualified in the sole judgment of the Employer, the above obligation will be inapplicable and the Employer may unilaterally establish terms and conditions of employment for running of the equipment and routine service and maintenance of projection and sound equipment until such time as a qualified Union applicant is found.

ARTICLE II

UNION SECURITY

2.1 All service technicians currently members of the Union shall be required, as a condition of continued employment, to remain members of the Union during the term of this Agreement. All service technicians hereafter engaged shall be required, as a condition of continued employment, to become and

[3] If this Order is enforced by a Judgment of the United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

remain members of the Union on and after the thirtieth (30th) day following the beginning of their employment. A service technician who fails to become or to remain a member of the Union as herein provided shall be dismissed by the Employer immediately upon demand of the Union. Nothing contained herein shall, however, require the Employer to discharge or in any way to discriminate against any service technician who has been denied membership or has had membership in the Union terminated for any reason other than the failure of such employee to tender the periodic dues and initiation fees uniformly required as a condition of acquiring or retaining membership. The Union shall indemnify and save the Employer harmless against any and all claims, demands, suits and other forms of liability, including reasonable attorneys' fees, that shall arise out of or by reason of action taken or not taken by the Employer at the request of the Union for the purpose of complying with any of the provisions of this Article.

2.2 Each employee covered by this Agreement to whom membership in the Union is not available shall be required as a condition of employment, beginning on the thirtieth (30`h) day following the beginning of such employment, to pay to the Union a service charge, exclusive of initiation fees, as a contribution toward the administration of this Agreement and the representation of such employee. The service charge shall be in the same amount and payable at the same time as the Union's regular dues and fees.

ARTICLE III

VACANCIES AND REFERRALS

3.1 The Employer shall give the Union an opportunity equal to other sources to refer applicants for all vacancies for positions coming within the scope of this Agreement; but it is agreed between the parties hereto that hiring of employees hereunder shall not be inconsistent with any applicable state or federal laws.

3.2 The Employer will inform the Union of the nature and type of work to be performed and such other information deemed necessary by the Employer to enable the Union to refer applicants who possess the skills, experience and qualifications required by the Employer.

3.3 The minimum qualifications for any service technician referred by the Union shall include, but not be limited to, the following:

A. The ability/skill required to perform the following on the projection and sound equipment in the Employer's motion picture theatres:

i. Routine maintenance as required/recommended by the Employer, equipment manufacturers and industry standards.

ii. Troubleshooting of projection and sound equipment/systems.

iii. Film projector/console service, including:

a. Projector targeting and image alignment.

b. Repair and replacement of all drive-train and film-path components.

c. Shutter timing. 2

d. Film guidance hardware alignment and repair.

e. Xenon bulb replacement and alignment.

f. Screen luminance readings.

g. Reflector, ignitor, power supply and related component service and replacement.

h. Lens and turret repair and alignment.

i. Automation and failsafe/cue detector operation, repair and replacement.

iv. Sound system service, including:

a. A-chain alignment.

b. B-chain alignment (auditorium equalization).

c. Sound pressure levels.

d. Analog and digital processor operation, repair and replacement.

e. Amplifier replacement.

f. Crossover (electronic and passive) repair/replacement.

g. Analog and digital reader repair, alignment and replacement.

h. Assistive listening device repair and replacement.

i. Speaker component replacement.

B. The working knowledge and ability to properly use the following tools:

i. Analog and digital oscilloscopes. Real-time analyzers (RTA's). 3

iii. Various SMPTE and Dolby test films.

iv. Sound pressure meter.

v. Light meter (one (1) degree spot meter).

vi. Basic hand tools (wrenches, screwdrivers, etc.).

3.4 The Employer reserves the right to accept or reject any applicant, but shall do so in a non-discriminatory manner. Each applicant may be interviewed by the Employer and may be requested to complete a pre-employment application form and pass a background check. In addition, the applicants may be skill tested on the Employer's premises. This test will be administered jointly by the Employer and a representative from the Union.

3.5 The probationary period by the service technician will be sixty (60) days and the Employer reserves the right, with the Union's approval, to extend such probationary period for up to an additional thirty (30) days. During this time, no reason for dismissal is necessary, no two (2) weeks' notice is necessary and the discharge is not subject to the grievance procedure.

ARTICLE IV

MANAGEMENT RIGHTS

4.1 The Employer retains the right to manage and control all aspects of the theatre operation, including, but not limited to, the employment, work schedule and assignments of employees; discipline; and termination of employees. Furthermore, the Employer has the right to enforce reasonable appearance standards for employees covered by this Agreement and determine the qualifications required for service technicians.

4.2 The Employer shall have the right to perform all work covered by this Agreement in excess of the guaranteed minimum hours listed in Article VI with supervisory personnel; and the performance of such work by said employees shall not be subject to the provisions of this Agreement. The Employer has

the right to request the service technician to train supervisory personnel in the proper operation of the theatre's projection and sound equipment. The Employer maintains the right to have designated outsource professionals perform any projection, sound or facilities-related services, without limitation, as long as said work does not impact the minimum hours listed in Article VI.

4.3 The Employer's failure to exercise fully any right under this Agreement shall not result in a waiver of such right, nor affect its ability to exercise such right at a future date.

ARTICLE V

NON-DISCRIMINATION

5.1 The Employer and the Union agree not to discriminate in any way against any employee or Tplicant for employment on account of membership or non-membership in the Union or on account of race, religion, creed, color, national origin, sex, age, sexual orientation or disability as defined by federal standards.

5.2 Employee means all persons covered by this Agreement, whether male or female, and the use of masculine pronouns or other masculine terms shall include males and females.

ARTICLE VI

HOURS AND WAGES

6.1 The Employer agrees to schedule a minimum number of hours per week for the Covered Theatres as detailed below. The Covered Theatres shall be defined as the Tower City, Shaker Square and Cedar Lee theatres. The Employer reserves the right to assign the shifts of the technicians employed under this Agreement. If the Employer determines that any employee, including a prospective employee, is not qualified to perform the work required and the Union is unable to provide a qualified employee within a thirty (30) day period, the guaranteed number of hours will be reduced by the number of hours listed for the service technician vacancy.

	Market Hours Per Week			
Effective	If Operating Three Theatres	If Operating Two Theatres	If Operating One Theatres	Approximate Weekly Breakdown (If Operating Three Theatres)
6/01/04	40	35	20	Lead Service Technician: 20-32 hours Swing Service Technician: 8-20 hours
6/01/05	35	30	15	Lead Service Technician: 20-32 hours Swing Service Technician: 8-20 hours

6.2 A shift shall normally consist of a minimum of four (4) hours, unless hereinafter specifically stated otherwise.

6.3 The Employer may assign supervisory personnel to operate the projectionist booth at any time during operating hours; however, the Employer shall schedule service technicians for no less than the hours called for in Section 6.2 above. Supervisory personnel shall not be covered by this Agreement and their wages shall be determined by management.

6.4 Work schedules shall be determined by theatre management and provided to the Union by the Wednesday preceding the start of a payroll week. If the work schedule is changed after Wednesday, the hours shall be in addition to those already on the schedule.

6.5 If the Employer closes all three (3) of the Covered Theatres, the lead service technician will receive severance pay in the amount of two (2) weeks of pay.

6.6 Service technicians shall be paid in accordance with the following hourly wages rates: A. Effective June 1, 2004: Fifteen Dollars ($15.00) per hour.

A. Effective June 1, 2004: Fifteen Dollars ($15.00) per hour.

B. Effective June 1, 2005: Fifteen Dollars and Twenty Five Cents ($15.25) per hour.

6.7 All time shall be paid in one (1) minute increments. The service technician is required to record his time, at the direction of the Employer, using written, mechanical or electronic means.

ARTICLE VII TRAVEL PAY

7.1 The Employer may require any service technician t) report to different locations during any work shift.

7.2 The service technician will be required to provide his own vehicle for travel between locations during a work shift. The service technician will be compensated at the Internal Revenue Service rate per mile. Mileage from the service technician's home and first theatre to be worked on that scheduled day shall not be included nor will mileage be incurred from the last location of the day to the service technician's home. This reimbursement includes both transportation and additional insurance costs.

7.3 Became the travel allowance includes reimbursement for insurance expenses with respect to an employee traveling from one location to another, the parties agree that the employee is solely responsible for obtaining and maintaining adequate liability and casualty insurance covering his vehicle during travel from one location to another location in the course of the employee's employment. The Employer shall not be responsible for any damage to the employee's vehicle or property or any third-party bodily injury or property damage liability which may arise as a result of the employee's ownership, use or operation of any personal vehicle used in the course of employment.

ARTICLE VIII VACATION

8.1 The lead service technician and swing service technician for the Covered Theatres shall be eligible for vacation pay.

8.2 The Employer's maximum obligation toward vacation pay shall be limited to eighty (80) hours per year for each year of the Agreement. All vacation requests must be submitted to a designated representative of the Employer at bast three (3) weeks prior to the vacation period. All vacations are subject to the review and approval of the Employer. Service technician

employees shall be compensated at the normal hourly rate for vacation pay. In order to receive vacation pay, vacation time must be taken. The business agent shall assume the complete responsibility for designating the proration of vacation pay to the employees and the Employer agrees to pay the employees as directed by the Union. The Union shall provide a qualified service technician to replace a vacationing technician. Pension and health and welfare contributions are to be paid to the technician on vacation.MANAGEMENT'S PROPOSAL – May 17, 2004

ARTICLE IX

PENSION

9.1 The Employer shall contribute to the Greater Cleveland Moving Picture Projector Operators Local 160 Pension Fund an amount equal to five percent (5%) of each employee's gross wages for any week or part thereof for which said employee receives pay, effective from the first (1St) day of employment.

9.2 Such payments shall be made on or before the thirtieth (30th) day of the month following the calendar month in which the payments accrue. The Employer hereby agrees to become a party to the Agreement and Declaration of Trust establishing the Greater Cleveland Moving Picture Operators Local 160 Pension Fund.

9.3 It is understood and agreed that the said Agreement and Declaration of Trust and said Pension Fund and its Rules and Regulations shall comply with all applicable laws and that the Pension Fund referred to herein shall be such as will qualify for approval by the Internal Revenue Service of the U.S. Treasury Department so as to permit the Employer any income tax deduction for the contributions paid hereunder.

ARTICLE X

HEALTH AND WELFARE

10.1 The Employer shall contribute to the Greater Cleveland Moving Picture Projector Operators Local 160 Health & Welfare Fund an amount equal to five percent (5%) of each employee's gross wages for any week or part thereof for which said employee receives pay, effective from the first (1St) day of employment.

10.2 Such payment shall be made on or before the thirtieth (30th) day of the month following the calendar month in which the payments accrue. The Employer hereby agrees to become a party to the Agreement and Declaration of Trust establishing the Greater Cleveland Moving Picture Operators Local 160 Health & Welfare Fund.

10.3 It is understood and agreed that the said Agreement and Declaration of Trust and said Health & Welfare Fund and their rules and regulations shall comply with all applicable laws and that the Health & Welfare Fund referred to herein shall be such as will qualify for approval by the Internal Revenue Service of the U.S. Treasury Department so as to permit the Employer any income tax deduction for the contributions paid hereunder.

ARTICLE XI

DUTIES

11.1 The service technician shall provide service and maintenance of theatre projection and sound equipment, as assigned by the Employer. These duties may include, but shall not be limited to, operation (non-routine/requested), maintenance, service, installation, removal and moving of all theatre-based projection and sound equipment, including screens, screen frames, speakers, curtain and masking motors, all types of lamp houses, rheostats, motor generators, rectifies, film build-up/teardown equipment, amplifiers, processors, spotlights and slide projectors.

11.2 The service technician may be required to complete daily and preventative service and corresponding reports as directed by Employer's representatives. The service technician will not be required to perform any work for which a building permit or code inspection is required.

11.3 The Employer shall furnish the tools and equipment necessary for the service technician to perform the requested duties. The service technician is solely responsible for said tools and equipment and must return all Employer-provided items upon request or termination of employment.

11.4 The Employer shall furnish a twenty-four (24) hour pager which the service technician is obligated to wear and respond to all calls and pages received, except on approved, prearranged days off. The service technician is responsible for responding to pages in accordance with the following priority policy: Emergency "911" calls/pages require a return call from the service technician within thirty (30) minutes between the hours of 10:00 a.m. and Midnight. Non-emergency calls/pages require a return call within one (1) hour during the service technician's normal schedule and within twenty-four (24) hours otherwise.

11.5 The service technician may be required to wear and maintain a uniform provided by the Employer.

ARTICLE XII

EMERGENCY CALLS,

12.1 If a service technician is called back for work or is called to a theatre for emergency repairs outside of his scheduled hours, he shall be paid a two (2) hour minimum or time worked, whichever is greater at the regular hourly rate.

12.2 The Employer maintains the right to assign the service technician projection or sound equipment related tasks for the remainder of the two (2) hour minimum after the emergency situation has been resolved.

ARTICLE XIII TERMINATION OF EMPLOYMENT

13.1 The Employer agrees that when desiring to terminate the services of a service technician represented by the Union and who is employed on a weekly basis, such employee shall be given two (2) weeks' notice or paid two (2) weeks' wages in lieu thereof, except in the case of cause (i.e., evidence of drinking alcoholic beverages, dishonesty, incompetence, insubordination, unauthorized use of film video tapes or equipment and/or illegal use of drugs); in which case, no notice or pay

shall be required. The Employer has the right to discharge any service technician during the probationary period as stated in Article III, Section 3.5 without cause and without giving the said two (2) weeks' notice.

13.2 Union employees shall give the Employer two (2) weeks' notice in case they desire to leave employment (except in case of nonpayment of wages when due, which shall be sufficient cause for immediate cancellation of relations).

13.3 The Employer shall furnish the Business Agent with a copy of all discipline and termination notices. The Union shall have the right to investigate and grieve all discharges provided the grievance is filed within seven (7) days from the date of the discharge. If the grievance is filed after the seven (7) day period and/or the two (2) week salary or notice has been accepted, the matter will be considered closed and not eligible under the grievance procedure.

ARTICLE XIV

GRIEVANCE AND ARBITRATION

14.1 Any complaint or grievance arising under the terms and provisions of this Agreement, or any difference between the parties as to the interpretation or application of this Agreement, shall be settled and determined by the dispute resolution procedure herein provided.

14.2 It is agreed and understood that the Executive Board of the Union may determine at any time that a grievance is without merit and ineligible for further processing.

14.3 In the event a grievance as defined in Section 14.1 above arises, there shall be no strike or lockout, but such controversy shall be settled by the employee(s) and the Employer in the following manner:

A. STEP 1: The employee(s) concerned shall discuss the grievance with the theatre manager within seven (7) days of its occurrence.

B. STEP 2: If a satisfactory accord is not reached at Step 1, the matter shall then be submitted to the Employer's Director of Operations or its designee and a Union representative within seven (7) days following the conclusion of Step 1. The representatives must have their final meeting within twenty-one (21) calendar days after the issuance has been submitted to them.

C. STEP 3: If the grievance is not settled at Step 2, it shall then be submitted to a grievance committee consisting of two (2) representatives of the Union and two (2) representatives of the Employer within seven (7) calendar days of the time Step 2 is concluded. The representatives must haw their final meeting within fifteen (15) calendar days after the issue has been submitted to them.

D. STEP 4: In the event the matter cannot be disposed of between the parties, either side shall have the right to refer the dispute to arbitration by serving written notice, within ten (10) calendar days after the final meeting stated in Step 3 above, of such intention on the other side.

14.4 In the event of arbitration:

A. The parties shall meet within fourteen (14) calendar days for the purpose of selecting a mutually-acceptable arbitrator. In the event that the parties cannot agree on a selection, then the American Arbitration Association or Federal Mediation and Conciliation Service shall be requested to submit a panel of seven (7) names of arbitrators. Within five (5) calendar days from the date the panel is submitted, the parties shall alternately strike names from the list until one (1) arbitrator remains. The American Arbitration Association or Federal Mediation and Conciliation Service shall not have the right to select an arbitrator who is not agreeable to both parties and the arbitrator assigned to hear the grievance shall not have the right to add to, subtract from or modify any terms of the Agreement.

B. The decision of the arbitrator shall be final and binding on both parties. Costs are to be shared equally. The arbitration shall at all times proceed with reasonable dispatch.

14.5 The time limits stated above may be extended by mutual agreement between the parties.

ARTICLE XV

NO STRIKE/LOCKOUT

15.1 The Union agrees that for the duration of this Agreement and any extension thereof, it will not call or sanction by employees or a group of employees or any other members of the Union any strike or other slowdown or cessation of work or picketing or handbilling in any form.

15.2 The Employer agrees that for the duration of this Agreement and any extension thereof, it will not lock-out any of its employees covered by this Agreement.

ARTICLE XVI

HEALTH AND SAFETY

16.1 The Employer and the Union recognize the importance of maintaining healthy and safe work conditions and both will cooperate to that end. Accordingly, the Employer shall make reasonable provisions for the safety and health of its employees during working hours.

16.2 Any employee who is involved in or witnesses an industrial accident or injury shall immediately inform the Employer thereof and shall promptly complete such forms and provide such statements as may be requested by the Employer.

ARTICLE XVII SUCCESSORSHIP

In the event of a sale, sublease, lease termination or permanent closure of any of the theatres covered by this Agreement, the Employer agrees to notify the Union as soon as possible and shall pay any monies earned and owed at the time of closure to employees or to any fund to which the Employer is obligated to contribute. If a theatre is sold or subleased, the Employer shall attempt to arrange a meeting between the Union and the new owner or operator. If required by law, the Employer will negotiate with the Union for a replacement unit for any one (1) of the three (3) existing Covered Theatres.

ARTICLE XVHI MODIFICATIONS

This Agreement shall not be modified, added to or subtracted from the parties except in writing signed by both the Employer and the Union. Any attempted modification, addition or deletion not in writing and signed by both parties shall be deemed wholly invalid and unenforceable.

ARTICLE XIX

CONFORMITY TO LAW

19.1 This Agreement shall be subject to any applicable federal, state and local laws, rules and regulations and the invalidity of any provisions of this Agreement by reason of any such existing or future law or rule or regulation shall not affect the validity of the surviving portions.

19.2 If the enactment of legislation or a determination by a court of final and competent jurisdiction renders any portion of this Agreement invalid or unenforceable, such legislation or decision shall not affect the validity of the surviving portions of this Agreement.

19.3 In the event any one (1) or more provisions of this Agreement is or are deemed invalid or unenforceable by any final decision of a court or governmental agency, that portion shall be deemed severable from the remainder of the Agreement and all such other remaining parts of this Agreement shall remain in full force and effect. In such event, the Employer and the Union will, at the request of either party hereto, promptly enter into negotiations relative to the particular provisions deemed invalid or unenforceable.

ARTICLE XX

WAIVER OF RIGHTS

Failure of either party to enforce any rights granted under this Agreement or law shall not constitute a waiver by either party of their right to assert such rights in other instances.

ARTICLE XXI

TERM OF AGREEMENT

This Agreement shall be in force and binding from the 1st day of June, 2004 until the 31st day of May, 2006. In the event either party wishes to amend, renegotiate or terminate this Agreement, they shall notify the other party of their intent at least sixty (60) days prior to the expiration of this Agreement. Thereafter, the Agreement shall renew itself from month-to-month unless either party shall give written notice to the other party of its desire to terminate or change this Agreement at least thirty (30) days prior to the expiration date or any date thereafter.

CLEVELAND CINEMAS MANAGEMENT CO., LTD
LOCAL NO. 160 OF THE INTERNATIONAL ALLIANCE OF THE THEATRICAL STAGE EMPLOYEES AND MOVING PICTURE TECHNICIANS, ARTISTS AND ALLIED CRAFTS OF THE UNITED STATES AND CANADA

APPENDIX B

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this Notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities

WE WILL NOT unlawfully fail and refuse to implement the Service Technician Agreement after reaching lawful impasse in negotiations with the Union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Federal Law.

WE WILL recognize and bargain in good faith with the Union and implement the Service Technology Agreement we proposed during negotiations with the Union.

CLEVELAND CINEMAS MANAGEMENT COMPANY, LTD, CLEVELAND CINEMAS, LLC, SHAKER SQUARE CINEMAS LLC, AND CEDAR-LEE THEATRE COMPANY, SINGLE EMPLOYER